O/Ess. Com (R. of D and A)
53.

1953.

P 6 E

File No. 27

Legal Deptt.

K **BRANCH**

Subject:–

Opinion on the Essential Commodities (Regulation of Disposal and Acquisition) Order 1947

O/Ess Com (R of D and A)/53

File No. 27/53

C O N T E N T S

Legal Department File No. C. Assn. Com (H.of D and [illegible]/5. 4.27).

Sr. No.	No. & Date.	Subject	Pages.
		Opinions under the essential [illegible] of Disposal and Acquisition) Order, 1947.	
1.	[illegible]-1-53	[illegible] of revocation of a Notification issued under [illegible] withdrawal of ---	1-6
2.	[illegible]/AC-1-53	[illegible] exporting without an contravention of the order. Sale of the frozen stock [illegible] sale proceeds should be paid [illegible]	7-10-

Mjr/16/B/
5 .8.

23/6

2418

Submitted.

2. Please see papers underlying R.L.A.'s opinion No. G-70, dt. 13-2-1952.

3. One, Shri Shankarlal Premchand and 4 others were prosecuted in the court of the Additional Resident, First Class Magistrate, Dohad for having failed todeclare their stocks in contravention of Notification No. Sup/RTN/1510, dt.28-2-50 issued by the D.M., Panch Mahals under clause 3 of the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, 1947 but they were all acquitted by the learned Magistrate on the ground that the D.M. had no power to issue the said notification under clause 3 as the State Government could not redelegate powers under section 3 of the E.S.(T.P.) Act, 1946 delegated to it by the Central Govt. under section 4 thereof. In view of this acquittal, the D.M. Panch Mahals requested the C.S.D. Bombay to pass orders whether the other pending cases for contravention of the Notifications issued under the ~~EXE.C.~~ provisions of the E.E.C.(R. of D. & A.) Order, 1947 should be withdrawn. The D.M. Surat also requested the C.S.D. to inform him about the correct legal position in respect of the orders issued under the E.E.C.(R. of D. & A.) Order 1947 so as to enable him todeal with cases where in the persons had failed to declare their stocks in his district. The C.S.D. informed the D. Ms. of Panch Mahals and Surat that the R.L.A. held the E.E.C.(R.of D. & A.) Order 1947 to be legally valid as in that order only certain executive functions were assigned to subordinate officers and there was no redelegation of the powers by the State Government. (Vide R.L.A.'s opinion No. G-70, dt. 13-2-1952). The C.S.D. also requested both the D.Ms. to pick up one case strong in facts from among the cases which might have failed in any court in their

district on the ground that the E.E.C.(R. of D. & A) Order 1947 was ultra vires and forward the same to Government so as to enable it to file an appeal in the H.C. Bombay against the judgement of the subordinate court. About 22 cases are pending the various court s of Surat Dist. wherein contravention of orders issued un- under clause 3 of the E.E.C. (R of D. & A.) Order, 1947 has taken place. The D.M. Surat has forwarded a list of all the 22 cases along with a brief description of default in respect of each case and has stated that out of the 22 cases, case No. 1 which has been recommended by the D.S.P. Surat to be strong in facts may be sent up for trial to court. In all the cases except case No. 1, no abnormal quantity was found in stock with the defaulters which was not declared by them and the non-declared stocks were used by them either for consumption or for seed purpose or for both. The C.S.D. proposes to ask the D.M., Surat to withdraw prosecu- tions in these cases in view of the revised food policy of Govt. As regards case No. 1, wherein 7 B. mds. and 20 seers of paddy were found in possession of the defaulters, the C.S.D. has referred these papers to this office for P.L.A.'s opinion whether this case may also not be withdrawn along with other 21 cases.

As the Civil Supplies Department has decided to withdraw the 21 cases in view of the revised food policy of Government there is no reason why the 22nd case (shown as S. No. 1 in th statement at pages 58-59) should not be withdrawn. It is tru that the District Government Pleader has recommended this cas as strong on facts and the District Magistrate, agrees with him but now there is no propriety in launching prosecution in a case which is detected two years ago with a view to get a law point decided in the High Court in respect of an order which is superseded and the doubt if any cured by an insertion of section 3(3) in the Essential Supplies (Temporary Powers) Act.

Sd/P.M.LAD.
30/1

Remembrancer of Legal Affairs.

U.R. to O.S.D. No. C- 74 dated the 30th January 1953.

VGP. 14-9-30.

The bags of wheat were illegally exported by the Ahmedabad merchant to his Commission Agent at Broach. They were frozen by the Collector of Broach in the hands of the Broach merchant. Then the Ahmedabad merchant was prosecuted for illeglly exporting the wheat out of the Ahmedabad District. In the meanwhile the Government directed the Broach merchant to sell the frozen wheat to Government at a particular rate. The sale price was however deposited by the Government in the Criminal Court as a Criminal Deposit as the offence was committed in relation to the wheat purchased by the Government.

It seems that the Ahmedabad merchant was convicted by the First Class Magistrate. The Magistrate also ordered that the wheat or its price may be returned to the accused. In appeal the Sessions Judge set aside the conviction but did not pass any new order as regards the disposal of the sale proceeds.

Thereafter the Broach merchant filed a suit against the Government and claimed the price of the wheat forzen in his hands. He alleged that the freezing order and the order for sale were illegal. He also alleged that before the freezing order was passed he had sold the wheat to a third person named Chhotalal Chakkubhai. The broach merchant also contended that he was a Pakka Adatia of Chhotalal and also of the Ahmedabad merchant. He was therefore entitled to claim the proper market price of the wheat on his own account. The Civil Court held that the Broach merchant was an ordinary agent of the Ahmedabad merchant and not a Pakka Adatia. The Broach merchant had not really sold the wheat to Chhotalal before the date of the freezing order, as alleged. The freezing order and the order for sale passed by the District Magistrate Broach were illegal. But the Broach merchant was not entitled to sue as he was not the owner of the goods. The Court therefore dismissed the suit. The Broach merchant has filled a First Appeal in the High Court against that decision. That appeal is pending,

Under these circumstances the Ahmedabad merchant has claimed the sale proceeds in ecordance with the order of the

Magistrate. The question for decision is whether the amount of the sale proceeds may be paid to him as directed by the Criminal Court. The facts stated above would clearly show that the wheat belonged to the Ahmedabad merchant at the date of the freezing order. The Broach merchant in whose hands they were forzen was a mere selling agent entitled to his commission. Hence the sale proceeds ought to be paid to the Ahmedabad merchant. But a complication is created by th decision of the Civil Judge in the Civil Suit. The decision as it stands at present is that the wheat belongs to the Ahmedabad merchant and the Broach merchant is not entitled to claim the price of the same. But if the High Court takes a different view and holds that there was a valid sale by the Broach merchant in favour of Chhotalal before the date of the freezing order the Governments will have to pay the pr price of the wheat to Chhotalal or his agent. In view of thi possibility the sale proceeds may not be paid to any of the contending parties till the High Court had decided the appeal If the amount is paid at this stage to the Ahmedabad merchant and if the High Court reverses the decision of the Civil Judge in the above suit, the Government may be required to make payment over again to the successful appellant. However if the Ahmedabad merchant is prepared to furnish security for the return of the amount to the Government if the High Court holds that the property in the goods had passed to Chhotalal before the date of the freezing order, the amount may be paid to him

Sd/P.M.IAD.
26/12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-797, dated the 28th December 1953.

VGP. 14-8-56.